

**SENATE BILL**

**No. 42**

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**Introduced by Senators Correa and Cogdill**

February 10, 2010

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An act to add and repeal Section 21099 of the Public Resources Code, relating to the environment, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 42, as introduced, Correa. Environment: California Environmental Quality Act (CEQA).

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA provides for the judicial review of a lead agency's decision to certify an EIR.

The bill would enact the CEQA Litigation Protection Pilot Program of 2010 and would require the Business, Transportation and Housing Agency to select projects that meet specified requirements from specified regions for each calendar years between 2010 and 2014. The bill would exempt from judicial review, pursuant to CEQA, a lead agency's decision to certify the EIR of, or to adopt a mitigated negative

declaration based on an initial study for, the selected projects, a lead agency's and responsible agency's approval of the selected project, and the Business, Transportation and Housing Agency's selection of the projects. The bill would require the Business, Transportation and Housing Agency, by December 31 of each year, to submit an annual report to the Governor and to the Legislature summarizing the designation of projects, and the job creation and investment attributable to the designated projects.

The bill would repeal the pilot program as of January 1, 2016.

(2) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on January 8, 2010.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on January 8, 2010, pursuant to the California Constitution.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 21099 is added to the Public Resources  
2 Code, to read:

3 21099. (a) This section shall be known as the CEQA Litigation  
4 Protection Pilot Program of 2010.

5 (b) (1) Notwithstanding other law, a lead agency's decision to  
6 certify an environmental impact report or to adopt a mitigated  
7 negative declaration based on an initial study for a project selected  
8 by the Business, Transportation and Housing Agency pursuant to  
9 this section is not subject to review by a court pursuant to this  
10 division.

11 (2) A lead or responsible agency's decision to approve a project  
12 selected by the Business, Transportation and Housing Agency  
13 pursuant to this section is not subject to review by a court pursuant  
14 to this division.

1 (3) The selection or designation of a project by the Business,  
2 Transportation and Housing Agency pursuant to this section is not  
3 subject to review by a court pursuant to this division.

4 (c) For the calendar year 2010, within 60 days of the effective  
5 date of this act, the Business, Transportation and Housing Agency  
6 shall solicit applications for an exemption provided pursuant to  
7 this section.

8 (d) Within 150 days of the effective date of this act, the  
9 Business, Transportation and Housing Agency shall select 25  
10 projects for the purposes of subdivision (b) as follows:

11 (1) Ten projects located in the counties of Imperial, Los Angeles,  
12 Orange, Riverside, San Bernardino, and San Diego.

13 (2) Five projects located in the counties of Alameda, Contra  
14 Costa, Marin, Napa, San Francisco, Santa Clara, Solano, and  
15 Sonoma.

16 (3) Five projects located in the counties of Fresno, Kern, Kings,  
17 Madera, Merced, Sacramento, San Joaquin, Stanislaus, and Tulare.

18 (4) Five projects located in the rest of the state.

19 (e) Within 150 days of the effective date of this act, the Business,  
20 Transportation and Housing Agency shall identify five alternative  
21 projects in a region identified in subdivision (c) for the purposes  
22 of subdivision (i).

23 (f) Within 150 days of the effective date of this act, the Business,  
24 Transportation and Housing Agency shall provide to the Legislature  
25 and the public a list of the projects selected pursuant to subdivisions  
26 (d) and (e) for public comments.

27 (g) (1) Within 190 days of the effective date of this act, the  
28 Business, Transportation and Housing Agency shall hold at least  
29 one public hearing in each region specified in subdivision (d) to  
30 consider public comments on the selected projects in each region  
31 specified in subdivisions (d) and (e).

32 (2) The Legislature may provide formal comments to the  
33 Business, Transportation and Housing Agency through legislative  
34 committees designated by the Speaker of the Assembly and the  
35 Senate Committee on Rules for their respective houses.

36 (h) Within 210 days of the effective date of this act, the  
37 Business, Transportation and Housing Agency shall finalize the  
38 selection of the projects pursuant to subdivisions (d) and (e).

39 (i) (1) For a project to qualify for the exemption pursuant to  
40 subdivision (b), the lead agency for the project shall certify to the

1 Business, Transportation and Housing Agency that it is the lead  
2 agency's expectation that the environmental impact report for the  
3 project will be certified within 12 months after the effective date  
4 of this act.

5 (2) If an environmental impact report of a project selected  
6 pursuant to subdivision (d) is not certified within 12 months after  
7 the effective date of this act, the exemption provided in subdivision  
8 (b) does not apply to that project.

9 (3) If an environmental impact report of a project selected  
10 pursuant to subdivision (d) is not certified within 12 months after  
11 the effective date of this act, the Business, Transportation and  
12 Housing Agency shall select an alternative project identified  
13 pursuant to subdivision (e) with an environmental impact report  
14 that has been certified within 12 months after the effective date of  
15 this act from that respective region for the purposes of subdivision  
16 (b).

17 (j) In selecting a project for the purpose of this section, the  
18 Business, Transportation and Housing Agency shall consider the  
19 following:

20 (1) The number and quality of jobs that will be created by the  
21 project.

22 (2) The amount of capital investment made by the project.

23 (3) A balance between projects sponsored by public and private  
24 entities.

25 (k) In each of the four calendar years following the effective  
26 date of this act, from 2011 to 2014, inclusive, the Business,  
27 Transportation and Housing Agency shall select 25 projects for  
28 the purposes of subdivision (b), subject to the same regional  
29 limitations as specified in subdivision (d), and subject to the same  
30 time deadlines as set forth in subdivisions (c) to (i), inclusive,  
31 except that the times shall be calculated from January 1 of each  
32 calendar year. In each calendar year, projects or groups of projects  
33 may be designated on a periodic basis in advance of those  
34 deadlines, if notice and hearing are provided as set forth in  
35 subdivisions (f) and (g).

36 (l) By December 31 of each year, the Business, Transportation  
37 and Housing Agency shall submit an annual report on this pilot  
38 program to the Governor and to the Legislature, summarizing the  
39 designation of projects pursuant to this section. This annual report  
40 shall also summarize the job creation and investment attributable

1 to the designated projects, and may provide additional information  
2 regarding the implementation of the designated projects.

3 (m) This section shall remain in effect only until January 1,  
4 2016, and as of that date is repealed, unless a later enacted statute,  
5 that is enacted before January 1, 2016, deletes or extends that date.

6 SEC. 2. This act addresses the fiscal emergency declared by  
7 the Governor by proclamation on January 8, 2010, pursuant to  
8 subdivision (f) of Section 10 of Article IV of the California  
9 Constitution.

10 SEC. 3. This act is an urgency statute necessary for the  
11 immediate preservation of the public peace, health, or safety within  
12 the meaning of Article IV of the Constitution and shall go into  
13 immediate effect. The facts constituting the necessity are:

14 To foster employment opportunities in the state by limiting the  
15 abuse of the court system to stop projects after they have been  
16 certified as meeting the requirements of the California  
17 Environmental Quality Act (Division 13 (commencing with Section  
18 21000) of the Public Resources Code) for the protection of public  
19 peace, health, or safety, it is necessary for this act to take effect  
20 immediately.

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